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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 579

PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION,

Petitioner,

vs.

SACRAMENTO MUNICIPAL UTILITY DISTRICT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Pacific Gas and Electric Company, a corporation organized under the laws of the State of California, prays this Court for the issuance of a writ of certiorari to the Supreme Court of the State of California to review a decision of said Court entered August 11, 1942, in a case numbered and entitled on its docket No. 5408, Sacramento Municipal Utility District, Plaintiff and Respondent, v. Pacific Gas and Electric Company, Defendant and Appellant, affirming a judgment of the Superior Court of Sacramento County, California. A petition for a rehearing was filed August 31, 1942, and was denied September 10, 1942 (R. 35).

Summary Statement of the Matter Involved.

This suit was brought in the Superior Court of Sacramento County, California, by the respondent, a public corporation organized under the Municipal Utility District Act (Cal. Stat. 1921, as amended) (R. 1), pursuant to the provisions of Section 526b of the California Code of Civil Procedure which section is set forth in the footnote below, to recover $9500.00 expenses incurred for the hire of attorneys in defending an action theretofore brought by the petitioner in the United States District Court, for the Northern District of California, to enjoin respondent from issuing, selling or delivering certain bonds which it proposed to issue and sell for the purpose of acquiring or constructing works for the distribution and sale of electric energy within the District, in which action an injunction was denied.

FOOTNOTE: Every person or corporation bringing, instigating, exciting or abetting, any suit to obtain an injunction, restraining or enjoining the issuance, sale, offering for sale, or delivery, of bonds, or other securities, or the expenditure of the proceeds of the sale of such bonds or other securities, of any city, city and county, town, county, or other district organized under the laws of this state, or any other political subdivision of this state, proposed to be issued, sold, offered for sale or delivered by such city, city and county, town, county, district or other political subdivision, for the purpose of acquiring, constructing, completing, improving or extending water works, electric works, gas works or other public utility works or property, shall, if the injunction sought is finally denied, and if such person or corporation owns, controls, or is operating or interested in, a public utility business of the same nature as that for which such bonds or other securities are proposed to be issued, sold, offered for sale, or delivered, be liable to the defendant for all costs, damages and necessary expenses resulting to such defendant by reason of the filing of such suit.

Petitioner is a public utility corporation organized and existing under the laws of the State of California, and owns, controls and operates plants and equipment for and is engaged in the business of generating, transmitting and distributing electric energy within the boundaries of respondent (R. 1, 2), District, and elsewhere in northern and central California.

In November 1934 the electors within the boundaries of respondent voted to issue bonds for the purpose of acquiring works for supply the inhabitants thereof with electric energy for light, heat and power purposes (R. 2). When such bonds were about to be negotiated, petitioner, as a taxpayer, brought an action in the United States District Court, for the Northern District of California, to enjoin respondent from issuing, selling or delivering the same (R. 2, 3) on the ground that no hearing had been had to determine whether petitioner's property would be benefitted by the proposed expenditure; that its property would not be benefitted thereby; that such bonds would become a lien on its property which might be taken or taxed to pay such bonds and such taking or taxing would be a violation of petitioner's rights under the Fourteenth Amendment to the Constitution of the United States. Said Court dismissed said bill of complaint without leave to amend (17 Fed. Supp. 685). Petitioner appealed to the Circuit Court of Appeals for the Ninth Circuit, which Court affirmed the judgment of said District Court (92 F. (2d) 365). The Supreme Court of the United States denied certiorari.

Petitioner in its argument before the Superior Court on demurrer to respondent's complaint in this action raised all constitutional questions it now raises and again raised the same questions by its answer to said complaint (R. 7).

The case was tried on an agreed statement of facts wherein it was stipulated that no injunction either tem-

porary or permanent, or restraining order of any kind, was ever issued in said action in the United States courts (R. 8); that the plaintiff does not claim any damages or expenses resulting from the filing and prosecution of such action in the United States courts except the sum of $9500.00 paid to its attorneys for defending the action in said courts (R. 9); and that all costs incurred therein which were taxable as costs in each of the several courts of the United States by which it was considered were taxed according to the respective rules of said courts and were fully paid by the petitioner (R. 8).

On March 29, 1940, said Superior Court entered judgment in favor of plaintiff and against petitioner (R. 11) awarding plaintiff $9500.00 and costs of suit.

On April 27, 1940, an appeal was taken to the Supreme Court of the State of California (R. 11). On March 11, 1941, the Supreme Court transferred said cause to the District Court of Appeal of the Third Appellate District. On July 16, 1941 the District Court of Appeal of the Third Appellate District of the State of California rendered its decision reversing the judgment of said Superior Court with directions to enter judgment for defendant. On September 11, 1941, the Supreme Court granted a hearing after a decision by the District Court of Appeal (R. 21).

On August 11, 1942, the Supreme Court entered its decision (R. 22-34) reversing the decision of the District Court of Appeal and affirming the judgment of the Superior Court of Sacramento County on the grounds that section 526b of the Code of Civil Procedure, quoted in footnote on page 2, created a civil liability applicable in the state courts as well as in the federal courts, therefore there was no discrimination against the federal courts and no interference with such courts. It also held that because the legislature might have concluded that persons owning property

of the same character as that for which a public corporation proposed to issue and sell bonds might be tempted to bring with less scrutiny of the merits thereof suits to enjoin the issuance and sale of such bonds the imposition on them of the burden of paying the defendant's attorney fees when no such burden is imposed on others who might bring similar actions is not arbitrary and said section does not deny to petitioner the equal protection of the law. A petition for a rehearing was filed on August 31, 1942, and was denied by said Supreme Court on September 10, 1942 (R. 34). On September 11, 1942, an order was entered affirming the judgment of said Superior Court and ordering remittitur to issue.

Opinions Below.

The opinion of the District Court of Appeal of the Third Appellate District does not appear in the official reports of the California Appellate Court Decisions but is reported in 115 Pac. Rep. 2nd Series, at page 582, and appears in the record (R. 13-21). The opinion of the Supreme Court of the State of California does not yet appear in the official California Reports but does appear in 20 A. C. 726 and in 128 Pac. Rep. 2d, Advance Sheets, at page 529, and appears in the record (R. 22-34).

Statement of Basis of Jurisdiction.

I.

The jurisdiction of this court is invoked under Section 237b of the Judicial Code (U. S. C. Title 28, Section 344b) to review a judgment of the Supreme Court of California, the highest court of said state, in which a judgment may be had, wherein there was drawn in question the validity of a state statute as being in conflict with the Constitu-

tion and laws of the United States and the decision was in favor of the validity of such statute.

II.

The judgment of the Supreme Court of the State of California sought to be reviewed was entered August 11, 1942 (R. 22). Petition for rehearing was filed August 31, 1942 and was denied September 10, 1942 (R. 34).

Questions Presented.

Whether the Supreme Court of California has erred and has decided the following federal questions contrary to applicable decisions of this Court in holding that:

1. The State of California can by statutory enactment create a civil liability which has the effect of penalizing the resort to the courts of the United States in a case arising under the Constitution and laws of the United States when no such liability is imposed by the Constitution or laws of the United States.

2. A state statute which imposes a liability for costs and expenses on persons owning public utility property of the same character as that for which a public corporation proposes to issue and sell its bonds in the event such person brings an actoin to enjoin the isuance or sale of such bonds and the injunction is denied and no such liability is imposed on persons not owning such property does not deny to the person owning such property the equal protection of the laws.

Reasons Why Writ of Certiorari Should Be Granted.

The Supreme Court of California erred

(1) In holding Section 526b of the California Code of Civil Procedure created a civil liability for expenses incurred for the hire of attorneys in defending an action

brought in the courts of the United States to assert rights claimed under the Constitution and laws of the United States, and has decided a federal question in conflict with applicable decisions of this Court; and

(2) In holding that a state may by statute without violating the equal protection clause of the Fourteenth Amendment impose on a limited class of persons owning, controlling or operating public utility property of the same character as that for the acquisition of which a city, county, state or district proposes to issue and sell bonds a civil liability for costs, damages and necessary expenses in the event such limited class of persons bring a suit to enjoin the issuance or sale of such bonds and the injunction is denied, when no such statutory liability is imposed on persons not owning property of such character and has decided a federal question contrary to applicable decisions of this Court.

WHEREFORE, petitioner prays that a writ of certiorari be issued out of this Court directed to the Supreme Court of the State of California commanding it to send to this Court for review and determination on a day certain to be therein named a full and complete transcript of the record of all proceedings in the case numbered and entitled on its docket No. 5408, Sacramento Municipal Utility District v. Pacific Gas and Electric Company, and that the judgment of said Court be reversed and that your petitioner have such other and further relief in the premises as to this Court may seem proper.

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Of Counsel.